

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JEREMY BAILEY,	:	
	:	
Plaintiff	:	No. 1:20-CV-1836
	:	
v.	:	Judge Kane
	:	
LIEUTENANT YODER,	:	Electronically Filed Document
SERGEANT R. BATIUK, C.O.	:	
DERR and C.O. ANTHONY,	:	<i>Complaint Filed 10/07/2020</i>
Defendants	:	

**DEFENDANTS' REPLY BRIEF IN FURTHER SUPPORT OF THEIR MOTION
FOR AN EVIDENTIARY HEARING ON THE ISSUE OF EXHAUSTION OF
ADMINISTRATIVE REMEDIES**

Defendants, through counsel, hereby file this Reply Brief in further support of their Motion for an Evidentiary Hearing regarding the issue of the exhaustion of administrative remedies pursuant to Local Rule 7.7.

Plaintiff essentially urges this Court to not schedule an exhaustion hearing in this matter because he allegedly exhausted his administrative remedies and that he made every attempt to name the John Doe Defendants thereby putting the Department on notice of which officers were allegedly involved in the underlying events at issue in this case. (*See* Doc. 91 at 1-2.)

First, Plaintiff has not provided the Court with any objective evidentiary proof that he exhausted his administrative remedies. (*Id.*) At this juncture, therefore, the Parties advance contrary factual assertions on exhaustion resulting in a dispute of fact.

Moreover, Defendants do not plan to assert that Plaintiff failed to name any Defendant within the relevant grievance; rather, Defendants will assert, and endeavor to establish, that Plaintiff procedurally defaulted any request for compensatory damages in this litigation because he failed to include any such monetary request within his initial grievance.

Seeing as a dispute of fact as to whether Plaintiff exhausted his administrative remedies wherein Plaintiff claims he exhausted his remedies and Defendants asserting that he did not, and seeing as this Court has previously held that resolution of the affirmative defense of exhaustion is needed prior to trial, (*see* Document 129, *Cooper v. Garman*, Civ. No. 1:19-CV-02227, (M.D. Pa.) (Oct. 27, 2022) (“ . . . the Court ultimately finding that it is necessary to resolve the issue of whether Defendants have met their burden to establish the affirmative defense of Plaintiff’s failure to exhaust administrative remedies before proceeding to the trial in this matter. . .”)), Defendants respectfully request that this Court schedule an evidentiary hearing in this matter on the issue of exhaustion.

Or, alternatively in the interests of judicial economy, Defendants would respectfully request that this Court issue an order setting forth a briefing schedule on the narrow issue of whether Plaintiff exhausted his administrative remedies with respect to monetary damages.

Respectfully submitted,

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Date: March 22, 2023

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CERTIFICATE OF SERVICE

I, Mary Katherine Yarish, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on March 23, 2023, I caused to be served a true and correct copy of the foregoing document titled *Defendants' Reply Brief in further support of their Motion for an Evidentiary Hearing on the Issue of Exhaustion of Administrative Remedies* to the following:

VIA U.S. MAIL

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s/ Mary Katherine Yarish
MARY KATHERINE YARISH
Deputy Attorney General